

The 14th March, 1986

No. 9/6/86-6 Lab./2164.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s. (i) Director, Health Services, Haryana (ii) C.M.O., Ambala.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 36 of 1985.

SHRIMATI SUNITA, WORKWOMAN AND THE DIRECTOR, HEALTH SERVICES HARYANA,
(II) C.M.O., AMBALA

Present:—

Shri Rajeshwar Nath, for the workwoman.

Shri Yogesh Sharma, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, has referred dispute between Smt. Sunita workwoman and the Director, Health Services, Haryana, Chandigarh, etc. to this Court. The terms of the reference are asunder:—

"Whether the termination of services of workwoman is justified and in order? If not, to what relief is she entitled?"

Smt. Sunita alleged that she joined service of respondent on 6th August, 1982. Her services were terminated with effect from 27th May, 1983 illegally against the departmental rules. She also alleged that certain junior persons are still in service. At the time of terminating her service no notice was issued to her, no retrenchment compensation was paid to her. So she alleged that the termination may be declared illegal and she be get reinstated with continuity in service and with full back wages.

Respondents contested the dispute and contended that Labour Court has got no jurisdiction to try this case. Further it was contended that Smt. Sunita was recruited with the condition that on arrival of a regular candidate from S.S. Board. Her services will be terminated and similarly one Gian Singh was posted in her place by Director, Health Services. When he reported on duty her services were terminated.

On the pleadings of the parties the following issues were framed:

Issues—

1. Whether the termination order, dated 20th May, 1983 is justified? If not, its effects? OPM.
2. Whether Labour Court has got no jurisdiction to try this case? OPM.
3. Whether the appointment of workwoman was on *ad hoc* basis, if so its effect? OPM.
4. Relief.

I have heard Shri Rajeshwar Nath for the workwoman and Shri Yogesh Sharma for respondent and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under:

Issue No. 1:—

In support of this issue Shri Yogesh Sharma appeared for management respondent and Shrimati Sunita appeared as AW-1. After going through the evidence I am of the opinion that in the case in hand Smt. Sunita joined service of respondent on 6th August, 1982. While her services were terminated on 27th May, 1983 before completing one year service in other words she had not completed service either of 240 days or more than that which means that she is not at all entitled to relief under section 25(F) of the Industrial Disputes Act, 1947. The learned A.R. of Smt. Sunita laid his stress that before terminating her services respondent did not issue any notice nor any retrenchment compensation was paid to her but these arguments and contentions are futile because when the workwoman did not complete her service of 240 days. In these circumstances section 25(F) of the I.D. Act, 1947 is not attracted.

No doubt Smt. Sunita is not entitled to relief under the I.D. Act, 1947 but she is entitled to relief under the general law or in other words under the Punjab Civil Services Rules. Because in her appointment letter Ex-R-3 which was bound to governed,—*vide* clause 9 under the Punjab Civil rules too. Services of Smt. Sunita were terminated with immediate effect that is from 20th May, 1983, Photo Stat Copy of this letter Ex-A-2 which is dated 27th May, 1983. This letter reads that Shrimati Sunita should consider herself having relieved of her duties on 20th May, 1983 afternoon and she was directed to hand over her charge to Shri Gian Singh clerk.

The above language clearly shows that 24 hours notice was not given to Smt. Sunita before terminating her services by the respondent which clearly means that there is a violation of clause (2) of appointment letter Ex-A-1. It was observed in 1983 Vol. 1, S.L.R., page 280 at page 281 that termination of services of primary employee held that one month notice or tender of one month salary in lieu of notice was a pre-requisite to the discharge of the petitioner held that order of termination is quite illegal and petitioner was entitled to consequential relief.

In other words in the case in hand no doubt one month notice or salary in lieu of one month notice was not a pre-requisite but the respondent was bound to issue 24 hours notice to dispensed with the service of Smt. Sunita but no such notice was served upon her.

Shri Yogesh Sharma appeared in the witness box as MW-1. In cross-examination he admitted that Smt. Sheela, Saroj, Juvinder and one Jusbir who are junior to Smt. Sunita are still in service this statement was made by Shri Yogesh Sharma on 8th May, 1985. It appears that the principle of first come last go was not observed.

So, it clearly means that there is a mis-carriage of justice and violation of fundamental cannons of law.

I would like to refer here 1980, Vol.-1-SLR, Rupinder *versus* Secretary to Government, Punjab page 710. It was observed that termination service of an *ad hoc* employees service of senior employee serving four years with good record terminating to accommodate a regular candidate while junior were retained in service. It was observed that senior employee could not be made to suffer to accommodate a regular candidate order of such a termination was set-aside.

In view of above facts; evidence and case laws referred thereto I am of the considered opinion that Shri Yogesh Sharma admitted on oath as per record in this case on 8th May, 1985 that four or five persons named above are still in service who are juniors to Smt. Sunita so the above termination is illegal on the ground that even regular employee arrived in the office of C.M.O. In these circumstances the service of junior most *ad hoc* employee should have been terminated and Smt. Sunita must have been retained in service.

In view of above discussions it is clear that first of all no 24 hours notice for terminating service of Smt. Sunita was issued by the respondent nor first come at go principle of service was observed so the order of termination of services of Smt. Sunita is illegal against the law so this issue is decided against the management respondent in favour of Shrimati Sunita.

Issue No. 2:

Smt. Sunita was an employee of Hospital. Hospital comes in the definition of industry in view of judicial pronouncement 1978 Labour and Industrial case page 497. In Bangalore water supply service a Rappa it was observed that hospital is an industry and its employee and employer can be safely tried by the Labour Court. Constituted under section 7 of the Industrial Disputes Act, 1947 this issue is decided against the management.

Issue No. 3—

Appointment of Smt. Sunita was on *ad hoc* basis and she was replaced by a regular employee Shri Gian Singh by Director Health services Chandigarh but her service cannot be terminated because certain junior employees were retained in service. The junior most employee should have been replaced by Shri Gian Singh but it was not done reasons best known to the respondent. After relying upon 1980 Vol. -1-SLR-Page, 710, Rupinder Secretary of Government Punjab I held that the claim of retention in service of an *ad hoc* employee than that of a regular employee after junior persons are in service is better of. In these circumstances I held that the claim of Smt. Sunita in spite of, being *ad hoc* employee is better than her junior employees. So this issue is decided, in favour, of Smt. Sunita against the management.

Issue No. 4:

For the foregoing reasons on the basis of my issue wise findings I held that the termination order regarding the services of Smt. Sunita is illegal and not in order. She is recruited from the day of termination, with continuity in service with full back wages. I pass my award regarding the dispute in hand accordingly.

Dated 17th December, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 3295, dated 31st December, 1985.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.